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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Ken Sundberg (hereinafter the Petitioner) for the property located at 253 Main Street, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map F-3 Parcels 121-1 & 121-2

This Decision is in response to an application submitted to the Board on June 5, 2007 by the Petitioner for a Special Permit & Site Plan Special Permit under Section 10.3 & 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) to expand an existing restaurant, construct an 8,000 two story addition.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order on July 16, 2007 at 7:45 PM continued to August 13th and again to October 9, 2007, in the Francis Faulkner Room at the Acton Town Hall. Board members F. Dore` Hunter, Lauren Rosenzweig, Andrew D. Magee and Paulina S. Knibee were present throughout the proceedings.

The record of the proceedings and submissions upon which this permit is based may be referred to in the Office of the Town Clerk, or the Office of the Board.

Exhibit I

A properly executed application for Site Plan approval received June 5, 2007, including a letter to the Acton Town Clerk, a letter to the Board of Selectmen, a certified abutters list, Use description, Record plans, Drainage calculations, Water balance calculations, Earth removal calculations, Traffic study, four-sheet set of engineered plans dated May 31, 2007 revised October 1, 2007 a landscaping plan dated March 9, 2007. Two-sheet set of architectural plans not dated. Two letters from the Petitioner requesting an extension dated July 9th and September 19, 2007. Supplemental Drainage Calculations dated September 14, 2007. A letter to the Board from the Petitioner dated September 14, 2007.

Exhibit II

Interdepartmental Communication (IDC) from the Town Manager to the Town Staff requesting comments. The following IDC's were received:

1. Building Commissioner dated July 9, 2007, September 18, 2007 and October 4, 2007
2. Town Planner dated July 9, 2007
3. Fire Chief dated July 13, 2007
4. Municipal Properties Director dated July 20, 2007
5. Engineering Department dated July 10, 2007
6. Health Department two IDC's dated June 19, 2007
7. Design Review Board dated July 5, 2007
8. Sidewalk Committee not dated

Exhibit I is hereinafter referred to as the Plan:

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1.0 Findings and Conclusions

Based upon its review of the exhibits and records of the proceedings, the Board found and concluded that:

- 1.1 The site is located in Kelley's Corner Zoning District and Zone 4 of the Groundwater Protection District and the Office USE is allowed in both the Kelley's Corner Zoning District and Zone 4. The restaurant USE is allowed by Special Permit.
- 1.2 The Petitioner originally requested a Special Permit for a 60-seat restaurant. A Privilege Fee would be required if the 60-seat restaurant is granted. The Petitioner does not want to pay the Privilege Fee therefore this Special Permit is limited to the previously approved 1,578 gpd for the property. There is no guarantee that additional capacity will be available at a later date.
- 1.3 The landscaping and lighting plan are different than the Site Plan. Both plans must be revised so as to be consistent with the approved Plan.
- 1.4 The Design Review Board has reviewed the Plans. The Petitioner has indicated the awnings will be material on frame. The Board finds the design of the buildings to be consistent with Acton's Design Review Guidelines. The new/revised building shall be consistent with the plans submitted.
- 1.5 The Board received several comments concerning the construction of the sidewalks in Kelley's Corner. The possibility exists that the abutting properties will be redeveloped; therefore this sidewalk should be designed to be a starting point along Main Street for abutting properties. The Board finds the sidewalks along Main Street in this area shall be 6' wide and constructed of concrete. The plan does not show a crosswalk at the driveway entrance. The Plan shall provide a crosswalk and it shall be "stamped concrete". The sidewalk shall be located so as to be 5' from the pavement of Main Street and end at the property line of the adjacent property. Detectable warnings shall be installed at all curb cuts along Main Street. The proposed sidewalk will be located partially within the street layout and partially on the property. The Petitioner shall, prior to occupancy, provide an easement plan for the sidewalk.
- 1.6 The Bylaw § 6.9.1.3 provides that adjacent land shall be connected by a common driveway. This property provides a common driveway to the adjacent land from the rear of the property but not the front. The common driveway at the rear may be relocated as needed to adjust for the future redevelopment of the adjacent property. The Board finds a common driveway would be beneficial at the front of the building. The Petitioner shall cooperate with the Board for a possible future connection depending on the re-development of the adjacent property.
- 1.7 The Plan provides for 51 parking spaces. The Bylaw requires only 24 parking spaces. The Plan does not indicate where snow storage will occur. The plan shall be revised to show where snow storage will occur and a minimum of 24 parking spaces shall be preserved.
- 1.8 The Plan provides that the existing landscaping will remain at the front of the existing building. The landscaping does not extend to the property line. The landscaping shall be extended to the property line.
- 1.9 The Plan shows re-striping of the parking lot on the adjacent property. The Petitioner does not control the adjacent property. All reference to re-striping shall be removed.
- 1.10 The Plan provides for maintaining an existing paved swale on the southeast corner along Beverly Road. The Board finds this swale shall be increased to a width of 5' to facilitate pedestrian access to the site from the Beverly Road neighborhood.

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1.11 The Plan as herein modified:

- Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
- Will provide for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation including emergency vehicles, on or adjoining the site.
- Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
- Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
- Is consistent with the Master Plan.
- Is in harmony with the purpose and intent of this Bylaw.
- Will not be detrimental or injurious to the neighborhood in which it is to take place.
- Is appropriate for the site and complies with all applicable requirements of this Bylaw.

Therefore, the Board voted 4-0 with Peter Berry abstaining to GRANT the requested Special Permit for a maximum of a 30-seat restaurant and Site Plan Special Permit subject to and with the benefit of the following, Plan revisions, Conditions and Limitations.

2.0 Plan Revisions

- 2.1 The landscaping and lighting plan shall be revised to be consistent with the Site Plan.
- 2.2 The sidewalk along Main Street shall be 6' wide and constructed of concrete. A 5' landscape strip shall be maintained along Main Street. The sidewalk along Main Street shall end at the adjacent property. The curb cuts along Main Street shall include an ADA complaint detectable warning strip.
- 2.3 The driveway entrance crosswalk shall be stamped concrete.
- 2.4 The existing landscaping along the northwest boundary shall be extended to the boundary.
- 2.5 The Plan shall be revised to indicate where snow storage will occur. A minimum of 24 parking spaces shall be maintained.
- 2.6 The existing paved swale at the southeast shall be increased to 5' on the property.
- 2.7 The plan shall be revised to show a possible future Common Driveway connection to the adjacent property in front of the building at a minimum width of 20 feet.

3.0 Conditions

- 3.1 The Petitioner shall prepare a sidewalk easement plan along the Main Street boundary. The Plan shall be prepared prior to Occupancy.
- 3.2 Prior to final inspection of the plantings by the Tree Warden, the Petitioner shall submit a letter, stamped and signed by the Landscape Architect of record, that the plantings were installed in compliance with commonly accepted industry practice, that they comply with the American Standard for Nursery Stock (ANSI Z60.1-2004), and that the actual plantings are consistent with the approved landscape plan.

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- 3.3 Prior to occupancy or use of any new building constituting a part of the project, an as-built plan shall be supplied by the engineer of record certifying that the project was built according to the approved documents. The as-built plan shall show all pavement, building and drainage structure locations above and below grade in their true relationship to lot lines, and include appropriate grades and elevations. In addition to the engineer of record, said plan shall be certified by a Mass. Registered Land Surveyor.
- 3.4 Prior to occupancy the Petitioner shall submit an as-built plan prepared by the designer that correctly reflects the as-built installation of the exterior lighting and certify the installation conforms to the requirements of the Bylaw.
- 3.5 It is not clear how or when the adjacent property will be redeveloped. The Petitioner shall cooperate with the adjacent property owner to include a common driveway as provided by Plan modification 2.7 in the front of the existing building if it is determined by the Board to be necessary to provide adequate room for safe vehicular turning movements and circulation.
- 3.6 The property is limited to a total of 1,578 gpd sewer flow unless approved by the Sewer Commissioner for a greater flow.
- 3.7 The location of the common driveway at the rear may be changed. The Petitioner shall cooperate if the Board, as part of the re-development of the adjacent property want an additional common driveway at the front of the property.

4.0 Limitations

The Authority granted to the Petitioner by this permit is limited as follows:

- 4.1 This permit applies only to the site, which is the subject of this petition. All construction shall be conducted in accordance with the terms of this permit and shall be limited to the improvements shown on the Plan.
- 4.2 There shall be no further development of this site without written consent of the Board of Selectmen as outlined within the Acton Zoning Bylaw.
- 4.3 This Decision applies only to the requested Site Plan Special Permit and Special Permit. Other permits or approvals required by the Acton Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4 No approval of any indicated signs or advertising devices is implied by this Decision.
- 4.5 The hauling of earth to and from the site shall be restricted to the hours between 9:00 AM and 4:00 PM Monday through Saturday.
- 4.6 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the Acton Zoning Bylaw.
- 4.7 This Site Plan Special Permit shall lapse on October 22, 2009 unless work approved by this permit has commenced except for good cause. Any request for extensions shall be made at least thirty (30) days prior to expiration. The Board reserves the right to amend the permit by its own or at the request of the Petitioner with or without a new hearing.

Site Plan Special Permit/Special Permit # 06/05/07-411
Ken Sundberg
253 Main Street (Magee)
Acton Massachusetts 01720

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5.0 Appeals

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this 5th day of Nov, 2007

F. Dore Hunter
F. Dore Hunter, Chairman

I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.

Christine Joyce
Christine Joyce, Recording Secretary

Nov 8, 2007
Date filed with Town Clerk

Eva K. Taylor
Eva K. Taylor, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the Decision of Ken Sundberg. has passed and there have been no appeals made to this office.

Date

Eva K. Taylor, Town Clerk

cc: Petitioner
Building Commissioner
Planning Board
Engineering
Conservation
Director of Municipal Properties
Board of Health
Town Clerk
Planning Boards - Concord, Littleton, Westford, Maynard, Carlisle, Boxboro, Stow, Sudbury